

COUNTY OF YORK

MEMORANDUM

DATE: August 13, 2001 (BOS Mtg. 9/04/01)

TO: York County Board of Supervisors

FROM: James E. Barnett, County Attorney

SUBJECT: Proposed Graffiti Ordinance

Attached is Ordinance No. 01-16 which, if adopted, will enact a new graffiti ordinance for the County. This draft ordinance has been the subject of previous work session discussions, but to repeat some of the points that have been made earlier:

1. This ordinance declares graffiti to be a public nuisance, and partly on the strength of that declaration, authorizes the County to remove graffiti from private property (after notice) and to charge the property owner for the cost of removal. This approach has been used by the Cities of Hampton, Norfolk and Alexandria, apparently without any legal challenges so far having been lodged against their ordinances. Although no statute specifically authorizes local governments to charge property owners for the cost of removing or obscuring graffiti, I believe it is significant that until 1997, Code of Virginia § 15.2-908, which authorizes local governments to remove or repair a defacement of private property "after reasonable notice," was amended to delete language which indicated specifically that such removal costs would be at the cost of the local government, and to delete language specifically requiring a court order before removal could be accomplished. The suggestion is that the General Assembly intended to allow local governments to proceed without first having to file suit, and to recover such costs from the owner. My interpretation has not been tested in court, I must admit.
2. Subsection (b) of the draft ordinance criminalizes as a Class 1 misdemeanor, damage to public buildings or private property if the damage is less than \$1,000. The proposed ordinance is drafted almost verbatim from Code of Virginia § 18.2-138.1, including those provisions with respect to community service as an alternative punishment and the requirement for at least partial restitution for property damage, or community service, as a requirement for probation for such offense. For your information, Code of Virginia § 18.2-137 also criminalizes the destruction or defacement of any property, including private property as a Class 1 misdemeanor if the value of the damage to the property is less than \$1,000, and as a Class 6 felony if the value of or damage to the property is \$1,000 or more. Consequently, the defacement of private property in an amount of \$1,000 or more is punishable as a

felony under state law, even though there appears to be no authority for local governments to adopt an ordinance with respect to damages in those amounts.

3. Likewise with respect to subsection (c), which indicates that parents may be liable for graffiti damages caused by their children, Code of Virginia § 8.01-43 authorizes the governing body of any local government or any school board to institute an action from the parents of any minor who has caused malicious or willful damage to public property, up to \$2,500. Otherwise, parents are not generally liable for the criminal or tortious acts committed by their children. The County could avail itself of the provisions of Va. Code § 8.01-43 even without including a similar provision in its ordinance. However, there may be some utility in including a provision in the County's ordinance which reminds parents of their ultimate responsibility for certain actions by their children.

Barnett/3340:swb

Attachment